

Amendments to Senate Bill No. 498  
3rd Reading Copy

Requested by Representative Brady Wiseman

For the House Federal Relations, Energy, and Telecommunications  
Committee

Prepared by Sonja Nowakowski  
April 17, 2009 (10:57am)

1. Title, page 1, line 5 through line 6.  
**Strike:** "BOARD" on line 5 through "CONSERVATION" on line 6  
**Insert:** "BOARD OF ENVIRONMENTAL REVIEW"
2. Title, page 1, line 9 through line 13.  
**Strike:** "REQUIRING" on line 9 through "STATE;" on line 13
3. Title, page 1, line 18.  
**Strike:** "82-10-402,"
4. Title, page 1, line 18 through line 19.  
**Strike:** "82-11-111" on line 18 through "82-11-163," on line 19
5. Page 2, line 2 through line 3.  
**Strike:** "Title" on line 1 through "2," on line 3  
**Insert:** "[Sections 1 through 12]"
6. Page 2, line 9.  
**Strike:** "Title" through "2"  
**Insert:** "[sections 1 through 12]"
7. Page 2, line 10.  
**Strike:** "Title" through "2,"  
**Insert:** "[Sections 1 through 12]"
8. Page 2.  
**Following:** line 21  
**Insert:** "NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:  
    (1) "Board" means the board of environmental review provided for in 2-15-3502.  
    (2) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources that is of such purity and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.  
    (3) (a) "Carbon dioxide injection well" means a well that injects fluids for the underground storage of carbon dioxide in a

geologic storage reservoir.

(b) The term does not include a class II injection well in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Geologic storage operator" means a person holding or applying for a carbon dioxide injection well permit.

(6) "Geologic storage reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including oil and gas reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

(7) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific geologic storage reservoir, checking the site for leaks or deterioration of storage integrity, and ensuring that carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

(a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored. Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and chemical reactions in the geologic formation.

(b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring; and

(c) establishing a system of leak monitors."

**Insert: "NEW SECTION. Section 3. Rules for administration and permitting.** (1) The board shall adopt rules necessary for the administration and enforcement of [sections 1 through 12]. The rules must include but are not limited to provisions that address:

(a) establishment of a geologic carbon sequestration program, including a permit system and requirements and procedures for applications and for issuing carbon dioxide injection well permits by the department to geologic storage operators;

(b) evaluation of possible geologic storage reservoirs, including but not limited to geologic surveys, existing data, test wells, and the feasibility of remediation;

(c) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide injection wells and sites;

(d) standards for determining the suitability of carbon dioxide for injection, considering the quality and purity of the carbon dioxide in order to not compromise the safety and efficiency of the geologic storage reservoir;

(e) procedures and requirements that a permit holder or another entity shall follow to ensure that the drilling, casing,

and plugging of carbon dioxide injection wells and other wells drilled into or through a geologic storage reservoir do not allow carbon dioxide to move out of one stratum into another, the intrusion of water into the carbon dioxide strata, seepages, or the pollution of drinking water supplies;

(f) characterization of the injection zone and aquifers above and below the injection zone that may be affected, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(g) verification and monitoring at geologic storage reservoirs;

(h) mitigation of leaks, including the ability to stop the leaking of carbon dioxide and to address impacts of leaks;

(i) restoration of surface lands;

(j) minimum levels of liability insurance that must be carried by a geologic storage operator while the well is under construction, during the lifetime of the well's operation, or until liability is transferred pursuant to [section 11];

(k) furnishing, updating, and release of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to comply with [sections 1 through 12] and rules adopted by the board. The bond provided by the geologic storage operator must be sufficient to guarantee the effectiveness of the carbon dioxide injection well and geologic storage reservoir and to cover costs to offset carbon dioxide emissions because of any failure of a carbon dioxide injection well or geologic storage reservoir to contain carbon dioxide.

(l) fees that are commensurate with the cost of implementing and administering [sections 1 through 12].

(2) The rules must include, at a minimum, requirements pursuant to applicable federal regulatory standards established by:

(a) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;

(b) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.;  
and

(c) the underground injection control program, 40 CFR, parts 144 through 147.

(3) The board shall periodically update rules to provide consistency between the rules promulgated under this section and any regulations promulgated for the regulation of geologic carbon sequestration by the United States environmental protection agency."

**Insert: "NEW SECTION. Section 4. Permit requirements -- appeals process.** (1) A person may not construct or use a carbon dioxide injection well or convert a well to a carbon dioxide injection well without a permit issued by the department pursuant to [sections 1 through 12].

(2) When the department approves or denies the application for a permit under this section, a person who is jointly or

severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(3) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for a hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions."

**Insert: "NEW SECTION. Section 5. Requirements for other wells.** A person may not drill a well that is not a carbon dioxide injection well into or through a geologic storage reservoir or use or plug a well drilled into a geologic storage reservoir unless the well is drilled, maintained, and, upon discontinuation of use, plugged in accordance with rules adopted pursuant to [section 3]."

**Insert: "NEW SECTION. Section 6. Enforcement notice -- administrative penalties.** (1) When the department believes that a violation of [sections 1 through 12], a rule adopted under [sections 1 through 12], or a condition or limitation imposed by a permit issued pursuant to [sections 1 through 12] has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of [sections 1 through 12], the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall issue an appropriate order for the taking of corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease, time limits for particular action in correcting the violation, or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative penalty of not less than \$75 or more than \$10,000 for each day of each violation. If an order issued by the department or board under this section requires the payment of an administrative penalty, the department or board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department under subsection (1).

(c) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

(d) The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

**Insert: "NEW SECTION. Section 7. Fees and penalties.** Any fees or penalties collected pursuant to [section 6] or rules adopted under [section 3] must be deposited in an account in the state special revenue fund provided for in 17-2-102 for use by the department of environmental quality to administer [sections 1 through 12]."

**Insert: "NEW SECTION. Section 8. Notice of application for permit.** The department shall provide notice of an application for a permit pursuant to [section 4]. The notice must be:

(1) published in a newspaper of general circulation in each county where the geologic storage reservoir is located; and

(2) mailed to all surface owners, mineral claimants, mineral owners, lessees, and other owners of record of subsurface interests that are located within 1 mile of the proposed boundary

of the geologic storage reservoir."

**Renumber:** subsequent sections

9. Page 2, line 27.

**Strike:** "SECTION 4(9)(A)"

**Insert:** "[section 11(9)(a)]"

10. Page 2, line 28.

**Strike:** "SECTION 4(9)(B)"

**Insert:** "[section 11(9)(b)]"

11. Page 3, line 6 through line 7.

**Strike:** "SECTION 4(6) and (8)" on line 6 through "82-11-136(2)" on line 7

**Insert:** "[section 11(6) and (8)]"

12. Page 3, line 8 through line 9.

**Strike:** "82-11-123(1)(f)" on line 8 through "4" on line 9

**Insert:** "[sections 3 and 11]"

13. Page 3, line 14.

**Strike:** "4(1)"

**Insert:** "11(1)"

14. Page 3, line 16.

**Strike:** "4(7)"

**Insert:** "11(7)"

15. Page 3, line 18.

**Strike:** "82-11-123(1)(f)"

**Insert:** "[sections 3 and 11]"

16. Page 4, line 29 through line 30.

**Strike:** "-- DEPARTMENT" on line 29 through "PARTICIPATION" on line 30

17. Page 5, line 3.

**Strike:** "82-11-111"

**Insert:** "[section 3]"

18. Page 5, line 8.

**Strike:** "SUBJECT TO SUBSECTION(5) THE,"

**Insert:** "the"

19. Page 5, line 10.

**Strike:** "THIS PART"

**Insert:** "[sections 1 through 12]"

20. Page 5, line 24 through line 26.

**Strike:** "(A)" on line 24 through "(5)(A), THE" on line 26

**Insert:** "The"

21. Page 6, line 1.

**Strike:** "AND (7)(C)"

22. Page 6, line 5.

**Strike:** "THIS PART"

**Insert:** "[sections 1 through 12]"

23. Page 6, line 8 through line 10.

**Strike:** "(I)" on line 8 through "(7)(C)(I), THE" on line 10

**Insert:** "The"

24. Page 7, line 1.

**Strike:** "[SECTION 2(1)]"

**Insert:** "[section 9(1)]"

25. Page 7, line 4 through line 5.

**Strike:** "under" on line 4 through "chapter" on line 5

**Insert:** "pursuant to Title 82, chapter 11,"

26. Page 7, line 10.

**Strike:** "this chapter"

**Insert:** "[sections 1 through 11]"

27. Page 7, line 12 through line 27.

**Strike:** section 6 in its entirety

**ReNUMBER:** subsequent sections

28. Page 8, line 12.

**Strike:** "82-11-101"

**Insert:** "[section 2]"

29. Page 11, line 2.

**Strike:** "82-11-101"

**Insert:** "[section 2]"

30. Page 11, line 3.

**Strike:** "Title 82, chapter 11, part 1"

**Insert:** "[sections 1 through 12]"

31. Page 14, line 11 through line 12.

**Strike:** "Title" on line 11 through "1" on line 12

**Insert:** "[sections 1 through 12]"

32. Page 15, line 8 through line 28.

**Strike:** section 11 in its entirety

**ReNUMBER:** subsequent sections

33. Page 16, line 5 through line 11.

**Strike:** subsections (3) and (4) in their entirety

**Renumber:** subsequent subsections

34. Page 16, line 30 through page 17, line 4.

**Strike:** subsection (11) through subsection (12) in their entirety

**Renumber:** subsequent subsections

35. Page 17, line 28 through page 18, line 6.

**Strike:** subsection (20) in its entirety

**Renumber:** subsequent subsections

36. Page 18, line 17.

**Strike:** "(21)(a)"

**Insert:** "(16)(a)"

37. Page 18, line 19.

**Strike:** "(21)(a)"

**Insert:** "(16)(a)"

38. Page 18, line 25.

**Following:** "reservoir"

**Insert:** "as defined in [section 3]"

39. Page 18, line 29 through page 25, line 30.

**Strike:** section 14 through section 21 in their entirety

**Renumber:** subsequent sections

40. Page 26, line 7.

**Following:** "wells"

**Insert:** "as defined in [section 3]"

41. Page 28, line 19.

**Strike:** "[SECTION 4(7)]"

**Insert:** "[section 11(7)]"

42. Page 28, line 30.

**Strike:** "6"

**Insert:** "12"

43. Page 29, line 1.

**Strike:** the first "82" through the second "1,"

**Insert:** "75, and the provisions of Title 75"

44. Page 29, line 2.

**Strike:** "6"

**Insert:** "12"

45. Page 29, line 10.

**Strike:** "board of oil and gas conservation"

**Insert:** "department of environmental quality"

46. Page 29, line 10 through line 11.

**Strike:** "department" on line 10 through "the" on line 11

47. Page 29, line 12.

**Strike:** "and"

**Insert:** "for submission to the board of environmental review and,  
upon adoption,"

48. Page 29, line 14.

**Strike:** "25"

**Insert:** "22"

49. Page 29, line 15.

**Strike:** "board of oil and gas conservation"

**Insert:** "department of environmental quality"

50. Page 29, line 17.

**Strike:** "26"

**Insert:** "23"

**Strike:** "29"

**Insert:** "26"

51. Page 29, line 18.

**Strike:** "board of oil and gas conservation"

**Insert:** "department of environmental quality"

- END -